



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

EARLY HISTORY OF THE FEDERAL SUPREME COURT, by W. H. Muller. (Boston: The Chipman Law Publishing Company, 1922, pp. xii, 117.)

The purpose of this book is to present some of the problems confronting the Federal Supreme Court from its organization to the appointment of John Marshall as Chief Justice and to show the progress made during this period towards their solution.

The author states that as time passes and attention is focused upon the great opinions involving questions more directly affecting our daily lives, the profession is apt to overlook the services of the pioneers of the federal judiciary and this book may serve to refresh the mind. This is very liberal and gracious, for the true situation appears to be that many of us have but scant knowledge concerning the early history of the Supreme Court. It is more a matter of learning for the first time than refreshing the memory.

In the minds of many of the profession, and to a greater extent in the popular mind, the Supreme Court begins its history with Chief Justice Marshall. The average citizen, and even the average lawyer, knows little of its early history, beyond the fact that John Jay, the first Chief Justice, resigned his great office to become Governor of New York. The author says, "It is generally thought that its real history begins with the appointment of John Marshall as its Chief Justice. A study, however, of its establishment, of its first members, and their early decisions is instructive and shows that the foundations were already being laid for its future greatness and influence, even before the appointment of the Great Chief Justice. In fact, it may be said that its previous history made his career possible." There is scarcely a phase of American legal history of the same relative importance concerning which there is so little enlightenment and this book fulfills the purpose of the author and serves a real need in giving to the profession a brief survey of this important introductory period.

Quite logically, the discussion commences with the independence of the States. The author points out that many of the problems which later came before the Supreme Court, such as those involving taxation and the relation between the federal government and the States, existed during the period of the Revolution and the Confederation, the termination of the stress of war causing these questions to become of paramount importance. The establishment of a Federal Judiciary under the new Constitution is next considered and an interesting account of the organization of the Supreme Court and the appointment of its members follows. It is worthy of note that at the first five terms of the new court, there were extremely few causes and these concerned matters of procedure. The author draws the reasonable conclusion that the full power and effect of the Federal Judiciary had not been comprehended either by suitors or their legal advisers.

The first case of importance, *Hayburn's Case*, is next considered and the author shows that even at this early date, the court declared the judiciary independent of the other branches of the government. Then

follows a discussion of the first great controversy, *Chisholm v. Georgia*, involving the right of a citizen to sue a sovereign State in the federal courts. The decision held that such right existed, but the storm of protest which arose resulted in the adoption of the Eleventh Amendment denying the right, thus overcoming the effect of the decision. The Supreme Court, however, had asserted the supremacy of the national government over that of the States and the author calls this decision, "the cornerstone of the national structure", stating further that in *Marbury v. Madison*, the Great Chief Justice was merely continuing the doctrine of national supremacy laid down by the members who had preceded him.

The growth of the Supreme Court in power and influence is next traced, how it upheld the national honor when it declared the Treaty of 1783 superior to the confiscation acts of the States, and finally how the foundation of American international law was laid. In conclusion, there are brief sketches of the Justices appointed between 1792 and 1800.

The author shows a scientific understanding of our basic political organization and the social and political forces which resulted in the formation of the early parties; the discussion being free from the bias of the extreme nationalist as well as the States right partizan. The treatment of the material in the last part of the book, due possibly to the nature of the material itself, does not appear to be so satisfying as that of the first portion, dealing with the very beginnings of the Court and the first great causes brought before it.

This history is rather short, somewhat in the nature of an outline, and necessarily does not deal with the subject so deeply as would a more pretentious work, but it is written for the profession and its very brevity and condensation help to serve its purpose, in giving to the busy lawyer a means whereby, within brief compass, he may become cognizant of the early days of the Supreme Court and the foundation which its first members laid for the great structure existing today.

THEODORE S. COX.

*University of Virginia.*